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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,989	09/26/2001	Roland N. Walker	12160.2	2969

21999 7590 12/04/2006

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EXAMINER

BALDWIN, GORDON

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/964,989

Applicant(s)

WALKER, ROLAND N.

Examiner

Gordon R. Baldwin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-15, 26, 27, 35 and 37-41 is/are pending in the application.
- 4a) Of the above claim(s) 1-10, 16-20, 25, 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-15, 26, 27, 35 and 37-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

**Claims 12-15, 26-27, 35 and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skonecki (Pat. No. 5,305,550) and further in view of Roulleau (Pat. No. 5,142,976).**

Skonecki teaches an organic product such as a fresh natural flower, such as a rose, in a natural configuration in which the product is provided with a personalized message or drawing inscribed on one of its petals. (Col. 1 lines 24-38). Skonecki does not require a pad-printed image, however, Roulleau teaches as organic product in which the surface of the product comprises pad printed images. (Col. 1 lines 61-65) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the organic product of Skonecki with a pad printed image so as not to damage, or etch or cut the surface of the organic product when the image is printed on the surface on the organic product and in order to provide the surface of the organic product with a repeatable and identical image.

Regarding claims 15 and 27, patentability of product-by process claims are based on the product itself even though such claims are limited and defined by the process. Thus, the product is unpatentable if it is the same as or obvious from the product of the prior art even if the prior product was made by a different process.

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Regarding claims 14 and 26, Skonecki teaches the inscription may be a personalized message such as the word, "congratulations". (See Skonecki Fig. 1)

### ***Response to Arguments***

Applicant's arguments filed 9/18/2006, with respect to the 35 U.S.C.103 (a) rejection using Jones (Pat. No. 6,172,328) have been fully considered and are persuasive. The rejection of claims 12-15, 26-27, 35 and 37-41 involving Jones has been withdrawn.

Applicant's arguments filed in regard to the 35 U.S.C.103 (a) rejection using Skonecki (Pat. No. 5,305,550) and Roulleau (Pat. No. 5,142,976) have been fully considered but they are not persuasive. The applicant is arguing that Skonecki is not a proper basis for a 103 (a) rejection because Skonecki uses a hand-held applicator, which would somehow prohibit or limit production of an image being placed upon the petal of a flower. In applicant's arguments involving claims 35 and 37, the applicant states the invention is to be able to provide a, "repeatable, identical, pad printed, image provided on each of the flowers in the group of flowers." While the way in which the decoration is applied to the petal of Skonecki may be different than the applicant's application, Skonecki is considered to teach a decoration placed upon the petal of a live flower. The repeatable, identical, pad printed, image is considered to be resolved with the application of the combination of Skonecki with Roulleau. The teaching of Roulleau teaches a pad printing process that is considered to make an identical and repeatable and usable in a mass production manner. As for

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Roulleau not teaching the printing on a, "delicate organic product", the use of eggs is considered to be encompassed by a delicate organic product since it is organic and easily breakable. Additionally, as shown in figure 1 of Roulleau, the printing, which includes pad printing an image as taught in Roulleau (Col. 3 lines 1-15), is shown to be on the surface of the egg (delicate organic product) and is therefore considered to encompass a surface-only image.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon R. Baldwin whose telephone number is (571)272-5166. The examiner can normally be reached on M-F 7:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GRB



JENNIFER MCNEIL  
SUPERVISORY PATENT EXAMINER

11/24/06